

DOL WAGE AND HOUR INVESTIGATIONS AND DOL'S NEW PAID PROGRAM

**April 26, 2018
Columbia SHRM Legal Workshop**

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NEXT CHALLENGE. NEXT LEVEL.
NEXSEN | PRUET

Why and How Investigations Start

- **Why**
 - **Complaint**
 - **Targeted industry**
- **How**
 - **Letter or phone call**
 - **Incorporates request for information**
 - **Show up unannounced**

Letter from Investigator and RFI

U.S. DEPARTMENT OF LABOR

Wage and Hour Division
Columbia District Office
1835 Assembly Street Suite 1072
Columbia, SC 29201
Phone: (803) 343-6869
Fax: (803) 343-6869



DATE: April, 2017

TO:

RECORDS PRESENTED ON:

DATE: 04/27/2017

TIME: TBD

FROM: Keira Ellis

SUBJECT: Visit by Wage & Hour Investigator

The Wage & Hour Division of the U.S. Department of Labor is responsible for the administration and enforcement of a number of Federal Labor Laws. These include the Fair Labor Standards Act (FLSA), commonly known as the Federal Minimum Wage and Overtime Law.

This is to advise you that I will visit your establishment on the date and at the time shown above to determine compliance with one or more of these laws. In this regard, I will need the items checked below.

Authority for this investigation is contained in Section 211(a) of the FLSA. Section 211(a) states, "The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter or which may aid in the enforcement of the provisions of this chapter."

Payroll Records for all employees (including payroll journals) for the time period April 2015 to the present.

Time Records for all employees for the time period April 2015 to the present.
 Listing of all employees considered to be exempt from minimum wage and/or overtime, with their job descriptions, salaries paid, and dates of employment.

- Records or documents that reflect the gross sales figures of your business for each of the last three years (fiscal or calendar). (Such as the first page of Form 1120, US Corporation Income Tax Return).
- List of 3 of your major vendors/suppliers, their addresses, and the type of merchandise supplied.
- Federal Identification Number.
- Names, addresses, and rate of pay of all employees for the past 24 months.
- Names, addresses, telephone numbers and titles of Owners/Corporate Officers / Shareholders, address and telephone number of headquarters.
- Locations of other stores/branches statewide with managers' contact information.
- Copy of the most recent payroll (2 weeks) for the entire location.
- 1099 Forms and contract documents with any independent contractors, subcontractors or day laborers at this establishment.
- Legal name of the company and all other names used by the company (e.g. "Doing Business As" names.)

The normal procedure is to hold an opening conference with a representative of the company, check certain records for a two-year period, interview a representative number of employees, and hold a closing conference to discuss the results of the investigation.

If you are unable to produce all of the requested documentation as of the date indicated, we shall proceed to conduct the audit with the information that you do have available pursuant to the authority contained in Section 211(a) and (c) of the FLSA and in Part 516 of the Code of Federal Regulations.

Per section 215(a)(3) of the FLSA, you are prohibited from retaliating against any person who files a complaint with the Wage and Hour Division or who cooperates with a Wage and Hour Division investigation. You are also prohibited from retaliating against your employees for accepting payment of the wages owed to them or from requiring your employee to return or decline payment of the wages owed to them.

Every effort will be made to conduct this assignment expeditiously and with a minimum of inconvenience to you and your employees. However, please note that the above is not intended to be an exhaustive or final list of records to be examined.

If you are unable to be present on the date and at the time indicated, you may designate a representative to act on your behalf. If you have any questions, please do not hesitate to contact me at (803) 476-6315.

Thank you for your attention to this matter.

Keira Ellis
Investigator, U.S. Department of Labor

Enclosures: Handy Reference Guide, Fact Sheet #44, Fact Sheet 77A, Fact Sheet #28D

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Key Events During Investigation

- **Opening conference**
 - Understand main focus and concerns
 - Be cooperative, but don't volunteer information
- **Inspection of records**
- **Employee interviews**
 - No retaliation

Key Events During Investigation

- **Closing conference**
 - **Initial determination about violations and money owed**
 - Back wages
 - Liquidated damages?
 - Civil money penalties?
 - **Back wage disbursement and summary of unpaid wages (WH-56) forms**

Back Wage Disbursement and Pay Evidence Instructions

U. S. Department of Labor

Wage and Hour Division
3000 Thurmond Federal Bldg.
1835 Assembly Street, Room 1072
Columbia, SC 29201



BACK WAGE DISBURSEMENT AND PAY EVIDENCE INSTRUCTIONS

As provided in the Acts enforced by the Wage and Hour Division, the Administrator of the Wage and Hour Division is authorized to supervise the payment of back wages. This document contains specific instructions on providing evidence of payment to the Wage and Hour Division.

IMPORTANT DATES TO REMEMBER

- Date payment must be made to employees/former employees: Pay By
- Date final pay evidence must be received by the Columbia, SC District Office: Receipt
- Date unlocated employee listing and final check due in Columbia, SC District Office: _____

1. Per our agreement, your firm will make full back wage payment on or before: _____

2. Send the Wage-Hour Division final pay evidence to the Columbia, SC District Office **as they are returned to you** but no later than: _____

This should include:

- Signed WH-58 Receipt Form
- Copies of the FRONT AND BACK of the cancelled check(s) or a bank record of the employees who were paid through electronic funds transfer (EFT) for any person you have paid but for whom you do not have a signed receipt. If taxes are deducted from the employee's payment, please submit a check stub showing deductions. If liquidated damages are due, this information should also be listed on the check stub. The total amount on the check stub must reflect the same amount on the check.
- Listing showing any employee who have not been paid (due to missing address or otherwise). This list should include each employee's last known address, social security number, and what attempts you have made to locate the person. Examples of attempts made to the unlocated person will be a copy of the returned envelope, and or a copy of the certified mail tracking if the envelope is not returned.

3. Send the Wage-Hour Division a check (for all unlocated employees that you have no signed WH-58 receipt form or no cancelled check copy) on or before: 1/0/00

The check should be made out to "Wage and Hour Division - Labor" for the total NET amount

along with the check should be a listing of the Gross and Net amounts due each employee whose back wages are included in this check, along with their social security numbers, if any employee is located within the statutory time period, the U.S. Department of Labor will process payments to such employee.

- NOTE: Section 16(c) of the Fair Labor Standards Act also provides, in part: "Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States." Therefore, it is the policy of the Wage-Hour Division to deposit back wages due unlocated employees into the U.S. Treasury
- Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the U. S. Treasury as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134) published by the Secretary of Treasury in the Federal Register and other delinquent charges and administrative cost shall be also assessed.
- In the event of default, the Department intends to pursue additional action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, U. S. Treasury's Debt Management Service, and/or the Department of Justice.

All back wage pay evidence should be sent to:

U.S. Department of Labor
Wage Hour Division
Attention: **Dowana Woodson**
1835 Assembly Street, Room 1072
Columbia, SC 29201
Phone/Fax: 803-343-6849

Agreed to by the following party:

Name: _____

Title: _____

Date: _____

UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

Signature: _____

Name: _____

Wage Hour Investigator: _____

Date: _____

NEXT CHALLENGE. NEXT LEVEL.

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WH-56 Summary of Unpaid Wages

Summary of Unpaid Wages

U.S. Department of Labor
Wage and Hour Division



Office Address: Columbia SC District Office US Dept. of Labor, Wage & Hour Division Strom Thurmond Federal Bldg. 1835 Assembly St., Room 1072 Columbia, SC 29201 803-765-5981	Investigator: Keira Ellis	Date: 06/27/2017
	Employer Fed Tax ID Number:	

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. BWs Due	Total
		06/20/2015 to 01/21/2017	FLSA	\$6,125.88	\$6,125.88
		05/28/2016 to 01/28/2017	FLSA	\$3,027.50	\$3,027.50
		06/20/2015 to 01/28/2017	FLSA	\$8,152.00	\$8,152.00
		02/13/2016 to 03/12/2016	FLSA	\$459.00	\$459.00
		03/05/2016 to 03/19/2016	FLSA	\$516.25	\$516.25
		07/30/2016 to 08/06/2016	FLSA	\$104.00	\$104.00
		08/13/2016 to 12/24/2016	FLSA	\$708.50	\$708.50
		12/24/2016 to 01/21/2017	FLSA	\$126.75	\$126.75
		03/05/2016 to 06/25/2016	FLSA	\$982.50	\$982.50

I agree to pay the listed employees the amount due shown above by	Employer Name and Address:	Subtotal: \$20,202.38	\$20,202.38
		Total: \$66,430.46	\$66,430.46
Signed: _____			
Date: 11/30/2017			

Date: 06/27/2017 11:17:35 AM

Case ID: 1815291

Form WH-56
Page 1

Post-Inspection

- **If settling:**
 - Disburse wages
 - Get receipt (WH-58)
- **If not settling:**
 - Try to resolve with District Director
 - Investigative finding by DOL
 - Try to resolve with Solicitor's Office
 - Possible lawsuit by DOL
 - Possible private lawsuit, likely collective action

WH-58 Receipt Form

U.S. Department of Labor
Wage and Hour Division
Receipt for Payment of Back Wages, Liquidated Damages,
Employment Benefits, or Other Compensation



I, _____, have received payment of wages, liquidated damages, employment
(typed or printed name of employee)
benefits, or other compensation due to me from _____
(name and location of the establishment)

for the period beginning with the workweek ending _____ 06/18/2015 _____ through the
workweek ending _____ 01/26/2017 _____ The amount of the payment I received is shown below.

This payment of wages and other compensation was calculated or approved by the U.S. Department of Labor Wage and Hour
Division (WHD) and is based on the findings of a WHD investigation. This payment is required by the Act(s) indicated below in
the marked box(es).

Fair Labor Standards Act (FLSA)

Gross Amount Back Wages _____ \$6,125.00 _____ Gross Amount Liquidated Damages _____ \$0.00 _____

Legal Deductions from Back Wages _____ Other Amount Paid _____ (please specify type)

Net Amount Received _____

NOTICE TO EMPLOYEE: Your acceptance of this payment of wages and/or other compensation due under the Fair Labor
Standards Act (FLSA) or Family Medical Leave Act (FMLA), based on the findings of the WHD means that you have given up
the right you have to bring suit on your own behalf for the payment of such unpaid minimum wages or unpaid overtime
compensation for the period of time indicated above and an equal amount in liquidated damages, plus attorney's fees and court
costs under Section 16(b) of the FLSA or Section 107 of the FMLA. Generally, a suit for unpaid wages or other compensation,
including liquidated damages, must be filed within two years of a violation of the FLSA or FMLA. Do not sign this receipt unless
you have actually received this payment in the amount indicated above.

IMPORTANT TAX INFORMATION: The back wages you received are taxable wages subject to employment taxes (Federal
income tax withholding, social security tax, Medicare tax, and Additional Medicare Tax). The taxes withheld from your back
wages are listed on the line labeled "Legal Deductions from Back Wages." You should receive a Form W-2, Wage and Tax
Statement, from your employer reporting these amounts. For more information on the tax treatment of settlement proceeds, see
IRS Publication 4345, available at www.irs.gov.

RETRALIATION AND KICKBACKS PROHIBITED: Your employer is prohibited from retaliating against you for accepting
payment of wages you are owed or from requiring you to return or decline payment of the wages owed to you. Your employer is
also prohibited from retaliating against any person who files a complaint with the Wage and Hour Division (WHD) or cooperates
with a WHD investigation. Your employer is also prohibited from interfering with, restraining, or denying the exercise of Family
Medical Leave Act (FMLA) rights. You should contact the WHD immediately if your employer takes any of these actions or fails
to comply with the law in the future. Your identity will be kept confidential to the maximum extent possible under existing law.
You may contact the WHD by calling 1-866-487-9243 or 800-765-5981.

Signature of employee _____ Date _____
Address _____

I understand that my signature on this receipt and waiver attests to the fact that I have actually received the payment in the amount
indicated above of the wages, liquidated damages, or other compensation due to me, and that I waive my right to bring suit as
described above, and covering the period set forth above.

PENALTIES INCLUDING FINES OR IMPRISONMENT ARE PRESCRIBED FOR A FALSE
STATEMENT OR MISREPRESENTATION UNDER U.S. CODE, TITLE 18, SEC. 1001

Date: 07/20/2017 10:24:34 AM

Case ID: 3615281

Form WH-58 (Rev. April 2017)
Page 1

U.S. Department of Labor
Wage and Hour Division
Receipt for Payment of Back Wages, Liquidated Damages,
Employment Benefits, or Other Compensation



EMPLOYER'S CERTIFICATION TO WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR:

I hereby certify that I have on this (Date) _____ paid the above-named
employee in full covering lost or denied wages, liquidated damages, or other compensation as stated above. I further certify that I
have not and will not retaliate against the above-named employee for accepting this payment and I have not and will not ask the
employee to return all or part of this payment to me.

Signature _____ Title _____
(employer or authorized representative)

PENALTIES INCLUDING FINES OR IMPRISONMENT ARE PRESCRIBED FOR A FALSE
STATEMENT

Date: 07/20/2017 10:24:34 AM

NEXT CHALLENGE. NEXT LEVEL.

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PAID Program

- **“Payroll Audit Independent Determination”**
- **Self-audit, self-reporting program**
- **May fix inadvertent FLSA non-compliance**
- **Started on April 3, 2018**
- **Initially six month pilot**

PAID Program

Wage and Hour Division (WHD)

PAID Program

The Wage and Hour Division's (WHD) new nationwide pilot program, the Payroll Audit Independent Determination (PAID) program, facilitates resolution of potential **overtime and minimum wage** violations under the Fair Labor Standards Act (FLSA). The program's primary objectives are to resolve such claims expeditiously and without litigation, to improve employers' compliance with overtime and minimum wage obligations, and to ensure that more employees receive the back wages they are owed—faster.

Under the PAID program, employers are encouraged to conduct audits and, if they discover overtime or minimum wage violations, to self-report those violations. Employers may then work in good faith with WHD to correct their mistakes and to quickly provide 100% of the back wages due to their affected employees.



NEXT CHALLENGE. NEXT LEVEL.

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When Not Available

- **Can't be used to resolve:**
 - **Already-existing lawsuit or DOL enforcement action**
 - **Claims identified in a demand letter**
- **Can't be used by employers with history of repeat violations**

How it Works

- **Conduct self-audit and identify:**
 - **Non-compliant practice(s)**
 - **Impacted employee(s)**
 - **Time period(s) involved**
 - **Amount of back wages owed**
- **Develop plan to correct going forward**
 - **Be prepared to pay 100% of back wages owed**

Pros and Cons

- **DOL will review audit and plan and, if accepted, will:**
 - **Supervise settlement, issuing WH-56 and WH-58 forms**
 - **Not charge liquidated damages or civil money penalties**
- **Employees may reject settlement and file suit**
 - **Likely using employer's self-audit as evidence against it**

Questions or Comments Welcome

David Dubberly

Phone: 800-825-6757 or 803-253-8281

E-mail: ddubberly@nexsenpruet.com

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